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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CENTRAL EXCISE APPEAL NO.1 OF 2007

The Commissioner of Central Excise ..Appellant.

V/s.

M/s.Johnson & Johnson Ltd. ..Respondent.

Mrs.S.V.Bharucha i/b. H,P.Chaturvedi for appellant.

Mr.Madhur R. Baya for respondent.

CORAM : F.I.REBELLO AND
J.P.DEVADHAR, JJ.

DATED : 18TH OCTOBER, 2007.

P.C. :-

1. This appeal is filed by the Commissioner of Central Excise, Mumbai-III under section 35G of the Central Excise Act, 1944 against the order passed by the CESTAT on 24/4/2006 in Appeal No. E/737/00/MUM.

2. The short question involved in this appeal is whether the Tribunal was justified in holding that the respondent (‘assessee’ for short) was entitled to take Modvat credit on certain inputs used in the manufacture of goods falling under Chapter 56 of the Central Excise Tariff Act, 1985 ?

3. The facts relevant for this appeal are that

the assessee had filed the necessary declaration under Rule 57G(1) of the Central Excise Rules, 1944 seeking to avail Modvat credit on inputs used in the final products which was lying in stock on 15/2/1985. There was considerable correspondence exchanged between the department and the assessee regarding the availment of the credit. Ultimately, after about 17 months the assessee on its own took the credit. However, the Modvat credit was disallowed and penalty equivalent to the amount of credit was imposed.

4. On appeal filed by the assessee, the Commissioner of Central Excise (A) upheld the order of the adjudicating authority. On further appeal filed by the assessee, the Tribunal allowed the claim of the assessee. Hence this appeal is filed by the revenue.

5. In the present case, the finding recorded by the Tribunal is that in the absence of RG23A Part I register, the assessee has produced necessary documents like stock register, input invoice, original cardex records, copies of declaration, material receipt notes in respect of the said inputs which clearly establish that the assessee is entitled to the Modvat credit on the inputs used in the manufacture of the final product. There is no dispute that on the basis of the documents furnished, the assessee is entitled to the

Modvat credit.

6. In this view of the matter, the finding recorded by the Tribunal that the assessee is entitled to Modvat credit in spite of the fact that RG23A register was not maintained at the relevant time cannot be faulted. Accordingly, we see no merit in the appeal and the same is hereby dismissed with no order as to costs.

(F.I.REBELL0, J.)

(J.P.DEVADHAR, J.)